

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	2035.03
COMPLAINT INVESTIGATOR:	Sally Cook
DATE OF COMPLAINT:	May 2, 2003
DATE OF REPORT:	May 27, 2003
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	June 19, 2003

**COMPLAINT ISSUES:**

Whether the North Harrison Community School Corp and the Harrison County Special Education Cooperative violated:

511 IAC 7-21-4(b) by failing to provide at least two full-time instructional or program assistants, in addition to the teacher, in an early childhood special education classroom with nine students.

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, failing to:

- a. provide progress reports; and
- b. include the student in the general education classroom.

**FINDINGS OF FACT:**

1. The Student is four years old and is eligible for special education and related services as an early childhood student with multiple disabilities.
2. The Student is enrolled in an early childhood special education program designed primarily for students with disabilities, located in a community setting. The Student is enrolled for three days per week in the morning session ("Morning Class").
3. The Morning Class is conducted five days a week. No student is enrolled all five days. The number of days of enrollment varies from student to student, and the specific days of enrollment vary also. A cumulative total of fourteen children have been enrolled in the Morning Class over the course of the 2002-2003 school year. The following chart shows the days of the week for which each Morning Class student was enrolled during the peak enrollment period in February, March, and April, 2003:

Student #	Monday	Tuesday	Wednesday	Thursday	Friday
1			X		X
2				X	
3	X			X	X
4	X	X	X		
5	X	X			
6	X		X		X
7	X			X	X
8		X		X	X
9		X		X	
10		X	X	X	X
11		X	X	X	
12	X		X		
13	X		X	X	
14					X
<b>Daily Total</b>	<b>7</b>	<b>6</b>	<b>7</b>	<b>8</b>	<b>7</b>

3. As of May 1, 2003, a student enrolled for Thursdays exited the Morning Class.
4. A teacher and one assistant are assigned to the Morning Class.
5. A second early childhood special education class (Afternoon Class) was opened in the middle of the 2002-2003 school year. The enrollment numbers for the Afternoon Class are comparable to the enrollment numbers of the Morning Class, except that no students are enrolled for Tuesday afternoons, and during a few weeks in April, 2003, there were nine students enrolled in the Afternoon Class. However, the ninth student withdrew from the Afternoon Class, reducing Thursday afternoon's enrollment to eight students.
6. Due to difficulties in finding a substitute assistant on short notice, there have been days when an assistant was not present in the Morning Class. Since the beginning of the 2002-2003 school year, the list of potential substitutes has been expanded.
7. The Student's individualized education program (IEP) requires four progress reports during the school year, at the times that report cards for each grading period are issued to nondisabled elementary school students. Teachers prepare and mail progress reports. The Student's teacher signed and dated the Students' progress reports for the second and third grading periods. The date is to indicate the date of mailing.
8. The Parent received a progress report at the end of the first grading period in mid-October, 2002, as well as progress reports from related services providers. The Parent did not receive progress reports from the teacher for the second and third grading periods.
9. The early childhood special education program is located in a daycare center that offers preschool classes designed primarily for students without disabilities (General Education Classes). As the Student's individualized education program (IEP) calls for special education assistance during 75% of the instructional day, the remaining 25% is to be in a General Education Class. In accordance with that IEP and other similar IEPs, the students in the Morning Class are scheduled to be in a General Education Class from 10:00 a.m. to 11:00 a.m.

10. The Parent does not object to the Student's missing half of the hour in the General Education Class on Thursdays, due to scheduled related services.
11. The Parent notified the teacher and the local director of special education that the Student was to be accompanied by the Morning Class teacher or assistant when the Student went to a General Education Class. Although this service was not specifically required by the Student's IEP, the teacher adhered to the Parent's requirement.
12. There were occasional days when the Student did not participate in the General Education Class because the Morning Class teacher or assistant could not accompany the Student.

### **CONCLUSIONS:**

1. Findings of Fact #2, #3, #4, and #5 indicate that the staffing pattern for the morning session of the early childhood special education program meets the applicable requirement for a class of eight students. However, Finding of Fact #6 indicates that, upon occasion, the staffing requirement has not been met. Therefore, a violation of 511 IAC 7-21-4(b) occurred on an occasional basis.
2. (a) Findings of Fact #7 and #8 indicate that the Parent was not informed, when required by the Student's IEP, of the Student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the Student to achieve the goals by the end of the twelve-month period.  
(b) Findings of Fact #9 and #12 indicate that the Student has not been included in a general education classroom to the extent required by the Student's IEP. Although Findings of Fact #10 and #11 describe reasons for not implementing the Student's IEP, the applicable rule does not contemplate revising services and placement determinations without a meeting of the case conference committee. Therefore, violations of 511 IAC 7-27-7(a) occurred.

**The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

### **CORRECTIVE ACTION:**

By June 30, 2003, North Harrison Community School Corp and the Harrison County Special Education Cooperative shall:

1. Provide an assurance letter that substitute(s) will be assigned to the early childhood special education program when a teacher or an assistant is absent.
2. (a) Mail or deliver to the Parent a copy of the Student's Progress Reports for the second and third reporting periods.

Contact a sample of the parents of early childhood special education students to determine if progress reports need to be re-mailed to all parents of students in the early childhood special education program.

(b) Reconvene the Student's case conference committee to review and, if necessary, revise the Student's IEP with respect to the services, program modifications, and supports for personnel that will be provided for the Student to be educated and participate with nondisabled students in the community setting in which the early childhood special education program is located.

Documentation of compliance shall be submitted to the Indiana Department of Education, Division of Exceptional Learners by July 10, 2003.